Supreme Court, U.S.
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No. 98-1813

IN THE

Supreme Court of the United States

JUDY BAKER; MYRA ALLISON; BONNIE JOHNSON,

Petitioners,

v.

PATRICIA HADLEY,
COLUMBIANA COUNTY AUDITOR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JOHN K. ALBERTY
193 East Whittier Street
Columbus, Ohio 43260
(614) 445-6100

W. ANDREW HOFFMAN, III
Counsel of Record
FRIEDMAN & HOFFMAN
Three Commerce Park Square
23230 Chagrin Boulevard
Suite 720
Cleveland, Ohio 44122
(216) 292-1148

Attorneys for Respondent

153861

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

STATEMENT PURSUANT TO RULE 29.6

Respondent, Patricia Hadley, is insured by a publicly owned corporation, American International Group, Inc. A second insurer, Nationwide Mutual Insurance Company, is a majority stock owner in a publicly owned corporation, Nationwide Financial Services, Inc. Both insurers may have a financial interest in the outcome of this litigation.

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STATEMENT OF THE CASE

A. Introduction

This controversy arose out of a claimed "political firing" of the three Petitioners by the Respondent elected official, Patricia Hadley, Columbiana County, Ohio, Auditor. Ms. Hadley's position throughout the protracted litigation is that she desired to have loyal employees occupying the upper management positions of her office. There was not a wholesale firing in the office. The vast majority of her predecessor's office staff was left intact.

In affirming a final summary judgment, the Sixth Circuit Court of Appeals ruled that newly-elected officials may reorganize their departments. This is permissible even if a routine or ministerial job is transformed into a confidential or policymaking position. (App. A 15, 16).

B. The Underlying Facts

In November, 1990, longtime Democratic incumbent Columbiana County Auditor, Kent Bell, was defeated by Republican Opponent, Patricia Hadley, now Columbiana County Auditor, in the general election. Shortly after Bell's defeat, certain employees of the Auditor's office sought Union representation in order to protect their jobs. [R.30: Deposition of J. Baker at pp. 26-27].

The description in the Petition of the Petitioner's job titles omits several pertinent facts. Two employees, Judy Baker and Bonnie Johnson (Petitioners in the present case), resigned their positions as "Office Manager" and "Chief Deputy Auditor", respectively, on the same date, December

17, 1990. Their resignations were effected so that these employees could become eligible to join the then forming bargaining unit. [R.29: Administrative transcript of Personnel Board of Review at p. 83 ("A.T. at 83")]. Neither of these employees suffered a commensurate reduction in pay nor were their job duties or responsibilities altered in the slightest way after their resignations. *Id.*

On March 11, 1991, Ms. Hadley took office. On her first day, she had all employees of the Auditor's office complete "desk audits" which were detailed descriptions of their job duties, responsibilities and related information. [R.28: Exhibits 3,4, and 5 attached to Respondent's Motion for Summary Judgment].

Later that same day, March 11, 1991, Ms. Hadley met with Petitioners and informed them that they had been dismissed. The only evidence before the trial court was that Respondent Hadley dismissed Petitioners solely because she wanted to replace the upper management positions with people that would be loyal to her, that would share the same philosophies and belief on how the Auditor's office should be run, and would correct problems in the Auditor's office that Ms. Hadley attributed Petitioners as part of being. [R.32: Deposition of Hadley at pp. 56-68]. Petitioners' terminations had nothing to do with their political beliefs, and indeed, Respondent Hadley did not even know Petitioners' political affiliation. [R.32: Deposition of Hadley at pp. 12-14].

Petitioner Myra Allison was employed as "Budgetary Financial Specialist" [R.32: Deposition of Hadley, Exhibit 1]; Myra Allison was described by others as the "Head Bookkeeper". She was responsible for approving and

issuing requisitions for all county offices. She approved purchase orders with a self-imposed limit of $100,000. [R.29: A.T. at pp. 24, 128 and 129].

In her deposition, Ms. Hadley was not questioned by Petitioners about the reorganization of her office, despite their claims to the contrary. In support of her Motion for Summary Judgment, evidence was supplied by affidavits of Ms. Hadley and her two top administrators, John Goempel and Nancy Milliken. In her plan of reorganization, Ms. Hadley was able to reduce the top three administrative positions which were held by the Plaintiffs to two positions. Judy Baker had been "Office Manager". That position was eliminated in its entirety. Also, on April 1, 1991, Ms. Hadley hired John Goempel as "Chief Deputy Auditor". That position had been held by Petitioner Bonnie Johnson. In order to enhance the efficiency of the office, Ms. Hadley directed that twelve of the sixteen employees report directly to Chief Deputy Auditor, John Goempel. The four remaining employees, who are located on a different level of the Courthouse, were to report to Nancy Milliken.

In the chain of command, Nancy Milliken and John Goempel both report to Ms. Hadley. It is their job to filter out the information that is important to Ms. Hadley and relay it to her, as she is unable to be in all places at all times. In order for this to be done effectively, Ms. Hadley must be able to trust the top two employees who report to her. If an employee has a question or concern, he or she should report that directly to their supervisor, either Nancy Milliken or John Goempel, for resolution. If Ms. Hadley's personal attention is necessary, either Ms. Milliken or Mr. Goempel will discuss the matter with Ms. Hadley.

Also, because Ms. Hadley did not need a personal secretary, the two people she relies upon to screen calls, correspondence and to decide what information is released to the employees and public, are John Goempel and Nancy Milliken. Both John Goempel and Nancy Milliken are directed to treat the public professionally and fairly because it is the voters who deal with the Auditor's Office. On a regular basis, John Goempel and Nancy Milliken both deal with other elected officials and agency officials throughout the county. It was Ms. Hadley's intent to have persons who could speak accurately and professionally on behalf of the County Auditor. [R.63: Affidavits of Hadley, Milliken and Goempel, Exhibits attached to Defendant's Second Motion for Summary Judgment, j.a. at p. 518].

Ms. Hadley needed someone she could trust and who could serve as a close confidant to her on pending matters. She felt it was necessary to have a top management team of her personal selection in order that she could rely on them to communicate her policy and to implement her ideas. That was the reason she hired John Goempel and Nancy Milliken. She wanted to improve the perception of the County Auditor's Office, both within the County and throughout the State. She felt she could not do that unless she had a strong management team.

John Goempel and Nancy Milliken both fulfill a number of job duties in their positions as Head Bookkeeper/ Administrative Assistant and Chief Deputy Auditor. Those job duties were set out in lengthy affidavits attached in support of Ms. Hadley's Motion for Summary Judgment.

REASONS FOR DENYING THE WRIT

This Court has previously decided the issue before it and it should not be reviewed again. The Sixth Circuit Court of Appeals ruled the District Court properly granted Summary Judgment in favor of the Defendant and that decision should be affirmed. Not all governmental employees are entitled to First Amendment protection. The Respondent did not dismiss the Petitioners because of their political beliefs. There is no evidence to support that politics had any influence over Patricia Hadley's restructuring decision and thus Petitioners fail to even escape the first hurdle of a patronage dismissal case. Even if, for the sake of argument, politics was found to be the *sole* motivation in the dismissals, the Petitioners held inherently political positions and the positions were inherently political as envisioned by Patricia Hadley.

As this Court has previously held, "there is a vital need for government efficiency and effectiveness." *Elrod v. Burns*, 427 U.S. 347, 372 (1976). Auditor Hadley was able to reduce the Petitioners' three positions into two, thus making the Auditor's office more efficient. There was a need to improve the reputation of the office. Ms. Hadley's two key employees improved the effectiveness of the office by being responsible for supervising employees, handling citizen concerns, communicating with other office holders and disseminating information to the public. This Court has recognized the importance of an official's discretion in hiring loyal persons as top administrators:

> A government's interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing

> certain high-level employees on the basis of their political views.

Rutan v. Republican Party of Illinois, 497 U.S. 62, 74 (1990).

Ms. Hadley did this so that the public mandate would be followed. As this Court noted, there is "a need to insure that policies which the electorate has sanctioned are effectively implemented." *Elrod*, *supra*, at 372.

The only way for an elected official to be efficient and effective is to trim staff and place top management that can help with the goals, can design and implement policy and can be trusted with confidential communications.

The Petitioners claim that the courts below have left public employees with little or no protection is simply not true.[1] First of all, there was not a wholesale housecleaning

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1. In Ohio, as in many other states, public employees are protected by civil service enactments. *See* Ohio Rev. Code § 124, *et seq*. The Ohio Supreme Court noted in Paragraph 4 of its syllabus in the case of *Curtis v. State ex rel Morgan*, 108 Ohio St. 292, 140 N.E. 522 (1923):

> The fundamental purpose of civil service laws and rules is to establish a merit system, whereby selections for appointments in certain branches of the public service may be made upon the basis of demonstrated relative fitness, without regard to political considerations, and to safeguard appointees against unjust charges of misconduct and inefficiency, and from being unjustly discriminated against for religious or political reasons or affiliations. Those laws and rules may not be invoked by

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when Ms. Hadley took office. The vast majority of the office staff kept their jobs. The Petitioners, who were terminated, held the positions of Office Manager, Chief Deputy Auditor and Head Bookkeeper. The positions were important. In fact, the Sixth Circuit Court stated these (titles) suggest "the potential for considerable authority within the office." (App. A 14).

In answer to Petitioners' question (Pet. 11), "yes," it is reasonable for an elected official to envision job positions. How else can the efficiency, effectiveness and reputation of the public office be enhanced? "There is a need to insure that policies which the electorate has sanctioned are effectively implemented." *Elrod*, *supra*, at 372.

Petitioners advance an argument that any public employee can be terminated for any reason if the public employer "envisions" a job that required politics. (Pet. 11). This is a false concern. If this Court were to adopt the Petitioners' proposed standard, no elected official in the land could improve the function of her office. A public employee could simply state she only performed routine or menial work and be employed indefinitely. The newly elected official would be left with the predecessor's

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(Cont'd)

> an appointee, where no discrimination is claimed and no charges have been made involving misconduct, inefficiency, or other delinquency.

Thus, contrary to Petitioners' claims, public employees do enjoy protection in Ohio. In fact, all three Petitioners did take advantage of the Civil Service Statutes. Petitioner Myra Allison's claim had been completely adjudicated adversely to her. Petitioners Judy Baker and Bonnie Johnson's claims are still pending administratively.

problems. There is the risk that her efforts would be sabotaged by her own predecessor-entrenched upper management. Petitioners' proposed standard would extend an open invitation to a patronage employee of a defeated officeholder to collude with the officeholder, after his defeat but prior to installment of the newly elected official, to downgrade her job title and responsibilities.

This case presents itself with the wrong facts for the Petitioners to make that argument. No one has ever argued that the two people who replaced the Petitioners have not done exactly what the Respondent envisioned them doing. No one has ever argued the functions of the Columbiana County Auditor's office has not improved under Patricia Hadley. In short, Patricia Hadley has done exactly what she was elected to do. This litigation should be terminated once and for all.

CONCLUSION

Therefore, for the reasons stated, Respondent, Patricia Hadley, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

W. ANDREW HOFFMAN, III
Counsel of Record
FRIEDMAN & HOFFMAN
Three Commerce Park Square
23230 Chagrin Boulevard
Suite 720
Cleveland, Ohio 44122
(216) 292-1148

JOHN K. ALBERTY
193 East Whittier Street
Columbus, Ohio 43260
(614) 445-6100

Attorneys for Respondent